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10/065,793	11/19/2002	Jan Phillippe Eiras	1416.01	4753
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SMITH HOPEN, PA 180 PINE AVENUE NORTH OLDSMAR, FL 34677				
EXAMINER				
EL CHANTIL, HUSSEIN A				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: JAN PHILLIPPE EIRAS
AND MARTIN RIPPER

Application No. 10/065,793

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on March 27, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

EXAMINER'S ANSWER

The Appeal Brief entered August 17, 2007, presents claim 31 as a claim that has been rejected and is under appeal (A. Brief 5). Appellants have included claim 31 as rejected under 35 U.S.C. § 102(e) (A. Brief 8). The Examiner's Answer does not include claim 31 in the ground of rejection (Ans. 3) or any subsequent discussion of the ground of rejection, even though the Examiner agreed with the Appellants grounds of rejection presented for appeal (Ans. 2) and the Advisory Action of May 11, 2005 refers to claim 31 as rejected. Note that the

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Final Office Action of February 22, 2005 also does not include claim 31 in the statement of rejection under 35 U.S.C. § 102(e) (Final Action 2). Thus, there is no rejection of claim 31 of record.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner for the following:

- 1) to determine the status of claim 31;
- 2) to notify Appellants in writing of the Examiner's determination; and
- 2) for such further action as may be appropriate, consistent with Office policy and practice.

BOARD OF PATENT APPEALS AND INTERFERENCES

By: /s/
DALE M. SHAW
Chief Appeals Administrator
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DMS/tsj

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